Docket No.: 30275/40887
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
George J. Bremer et al.

Application No.: 10/625,839 | Confirmation No.: 9547

Filed: July 23, 2003 | Art Unit: 1612

For: TETRAPROPYLAMMONIUM TETRATHIOMOLYBDATE AND RELATED COMPOUNDS FOR ANTI- ANGIOGENIC THERAPIES | Examiner: Z. A. Fay

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response a restriction requirement mailed August 18, 2009 in the above application, the examiner asserted,

> This application contains claims directed to the following patentably distinct species anti-angiogenic agent selected from the group consisting of angiostatin, endostatin, trientine, penicillamine, zinc and anti-cancer agents selected from the group consisting of radiotherapeutic agent, immunotixin, anti-angiogenic agent, apoptosis-inducing agent and the distinct agent that bins copper, zinc and a component of ceruloplasmin oxidase assay.

The examiner further asserted, "The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species." Further, the examiner asserted, "There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics."

First the applicants point out that the standard for a proper restriction is recitation of independent **and** distinct inventions, not independent **or** distinct invention as asserted by the examiner. See 35 USC 121.

Second, MPEP 803 requires that the examiner must provide reasons to support the conclusion that a serious burden would exist if restriction were not required. The applicants note that this restriction requirement has issued after two previous restriction requirements (mailed November 6, 2005 and March 16, 2006) and five office actions (mailed July 7, 2006, January 16, 2007, May 31, 2007, February 21, 2008 and November 26, 2008). The applicants submit that the claims have not been amended in any way that would necessitate the instant restriction requirement and more importantly, **the five previous office actions are prima facie evidence that there has been no examination or search burden on the examiner for the claims as originally filed.**

Finally, the applicants submit that the restriction requirement in itself is so unclear that it is not possible to discern from what species the applications are supposed to elect. A breakdown of the examiner's comments is as follows:

- anti-angiogenic agent selected from the group consisting of:

(i) angiostatin,

(ii) endostatin,

(iii) trientine,

(iv) penicillamine,

(v) zinc and

(vi) anti-cancer agents selected from the group consisting of

(1) radiotherapeutic agent,

(2) immunotixin,

(3) anti-angiogenic agent,

(4) apoptosis-inducing agent and

(5) the distinct agent that binds copper, zinc and a component of ceruloplasmin oxidase assay.

It is unclear if the applicants are supposed to elect from (i) through (vi) or (i) through (vi) and (1) through (5).

Despite the confusion and the applicants' disagreement with this restriction, in an attempt to be fully responsive, the applicants elect (vi) anti-cancer agent for prosecution in the event that a generic claim is found unpatentable.

Dated: August 27, 2009

Respectfully submitted,

By _____
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